

REMARKS

Favorable reconsideration of this application, in view of the present amendment and in light of the following discussion, is respectfully requested.

Claims 30-55 and 58-111 are currently pending, with Claims 58-111 being withdrawn as directed to non-elected inventions. Claims 30-55 and 55 have been amended; and Claims 1-29, 56, and 57 have been cancelled without prejudice by the present amendment. The changes to the claims are supported by the originally filed specification and do not add new matter.

In the outstanding Office Action, Claims 1-57 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement; Claims 1-57 were rejected under 35 U.S.C. § 112, second paragraph, regarding the “and/or” limitations; Claims 56 and 57 were rejected under 35 U.S.C. § 101 as being directed to a non-statutory subject matter; Claims 1 and 29 were indicated as possibly being directed to non-statutory subject matter (software); Claims 1-7, 29-33, and 55-57 were rejected 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,999,908 to Abelow (hereinafter “the ‘908 patent”) in view of U.S. Patent No. 6,012,051 to Sammon, Jr. et al. (hereinafter “the ‘051 patent”); Claims 8, 9, 11, 13, 17-24, 34, 35, 37, 39, and 43-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘908 and ‘051 patents, further in view of U.S. Patent No. 6,578,014 to Murcko, Jr. (hereinafter “the ‘014 patent”); Claims 10, 12, 14, 36, 38, and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘908, ‘051, and ‘014 patents, further in view of the Palmer reference (“Fancy Labels, Plain Prices”); Claims 15, 16, 41, and 42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘908, ‘051, and ‘014 patents, further in view of U.S. Patent No. 6,012,045 to Barzalai (hereinafter “the ‘045 patent”); and Claims 25-28 and 51-54 were rejected under 35 U.S.C. § 103(a) as

being unpatentable over the '908, '051, and '014 patents, further in view of Anonymous ("Fresh Cargo Brand is Renamed").

Applicant respectfully submits that the rejections of the claims under 35 U.S.C. §112, first paragraph, are rendered moot by the present cancellation of Claims 1-30, 56, and 57, and the present amendment to Claims 30 and 55 or are otherwise traversed. Claim 30 has been amended to clarify that the notice step is performed in the development period and until before the new merchandise is manufactured and that the display unit is configured to display an inquiry input screen into which the customers input opinion information prior to manufacture of the new merchandise. See Figures 4 and 5, which show a development period (Figure 4) that precedes the manufacturing period shown in Figure 5. Thus, it is clear from an analysis of Figures 4 and 5 that, if customers input opinion information prior to the manufacture of the new merchandise,¹ then the opinion information that is input by the customers must necessarily be based on the merchandise planning and development information, and not on use of the new merchandise by the customers, since the new merchandise has not yet been manufactured! Thus, the "negative" limitation recited in Claim 1 is merely a restatement of the fact that the customers input information prior to the manufacturing of the merchandise and thus they must necessarily not base that opinion information on use of the new merchandise, since the new merchandise has not been manufactured. Applicant respectfully submits that this is not new matter since it is clearly disclosed by Figures 4 and 5. The fact that the specification does not explicitly include an exact phrase that states that the opinion information is "not on use of the new merchandise by the customers" does not mean that this limitation is not supported by the originally filed specification and drawings. If a step A occurs before a step B, it is inherent that step A cannot depend on step B, absent some type of feedback loop. Since this conclusion is

¹ See steps SA9 through SA17 in Figure 4.

inherent and follows from basic logic, it would be rare that an inventor would find it necessary to explicitly include it in the written specification. Further, regarding the passages cited by the Examiner on page 3 (from pages 56 and 41 in Applicant's specification), Applicant notes that those passages merely refer to product designs, as shown, for example, in Figures 13A-13C. While such product designs may be referred to in the specification as "trial products," the products have only been designed, but have not been manufactured. See steps SA13-SA16 in Figure 4 and the discussion on pages 56-58 in the specification. Thus, Applicant respectfully submits that the originally filed specification and drawings clearly support the claim limitations that the customers input opinion information prior to the manufacture of the new merchandise and not on use of the new merchandise by the customers, but on the merchandise planning and development information (which relates to the design specifications). As Figures 4 and 5 and the discussion related thereto in the specification make clear, the customers do not actually use the new merchandise when they provide opinion information, but only base their opinion on the design specifications that they have reviewed.

Applicant respectfully submits that the rejections of Claims 1, 29, 30, and 55-57 under 35 U.S.C. § 112, second paragraph, regarding the phrase "and/or" are rendered moot by the present amendment to Claims 30 and 55, and by the present cancellation of Claims 1-29, 56, and 57. Claims 30 and 55 have been amended to no longer recite "and/or" language. Further, regarding the Examiner's comments on page 4, Applicant notes that the independent claims have been amended to clarify that the merchandise planning and development information relates to design specifications of the new merchandise. Thus, the opinion information input by the customers is input information on the merchandise planning and development information that relates to design specifications of new merchandise.

Applicant respectfully submits that the rejections of Claims 1, 29, 56 and 57 under 35 U.S.C. § 101 are rendered moot by the present cancellation of those claims.

Amended Claim 30 is directed to a merchandise planning and development method, comprising (1) a merchandise planning information notice step of informing many and unspecified customers of merchandise planning and development information relating to design specifications of new merchandise in a development period, through the Internet, and until before the new merchandise is manufactured; (2) a displaying step of displaying, at a side of the customer, the merchandise planning and development information received through the Internet, the displaying step further displaying an inquiry input screen into which the customers to input, via the Internet, opinion information, prior to manufacture of the new merchandise, not on use of the new merchandise by the customers, but on the merchandise planning and development information, wherein the opinion information is inputted based on the displayed merchandise planning and development information in the development period of the new merchandise; (3) receiving, through the Internet, the opinion information input by the customers; (4) an opinion information collecting step of collecting the received opinion information input by the customers, through the Internet; and (5) a merchandise information notice step of informing the customers of information on merchandise designed according to an analysis of the opinion information, through the Internet.

Applicants respectfully submit that the rejections of Claims 1-29, 56, and 57 are rendered moot by the cancellation of those claims.

Applicant respectfully submits that amended Claim 30 (and all similarly rejected dependent claims) patentably defines over any proper combination of the '908 and '051 patents.

Regarding the rejection of Claim 30 under 35 U.S.C. §103(a), the Office Action asserts that the '908 patent discloses everything in Claim 30 with the exception of

transmission of data via the Internet, and relies on the '051 patent to remedy that deficiency. Further, Applicant notes that the Office Action again cites to columns 48 and 77 of the '908 patent as disclosing that "customer feedback regarding information and improvements on products before new merchandise is used" is received by the '908 system. However, Applicant notes that in the previous amendment, Applicant provided arguments as to why the '908 system is merely directed to information provided regarding a customer's actual use of a product. Applicant notes that the Office Action provides, on pages 31 and 32, a Response to Arguments section, but does not specifically address Applicant's arguments regarding the deficiencies of the '908 patent in this regard. Accordingly, Applicant will reiterate the arguments as to why the '908 patent does not disclose displaying an inquiry input screen into which customers input opinion information, prior to manufacture of the new merchandise, not on use of the new merchandise by the customers, but on the merchandise planning and development information, as recited in Claim 30.

The '908 patent is directed to a customer-based product design module configured to interact with customers, gather information from customers, communicate customer information securely to a vendor or an external third party, construct and transmit new preprogrammed interactions to the customer communication system in a product, and analyze and report customer information. In particular, as shown in Figure 2, the '908 patent discloses a system in which users of a product may provide feedback information to the product designers while the users are using the product.² In particular, the '908 patent discloses a customer-based product design module (CB-PD module) that may be attached to a device or incorporated into a device, such as a fax machine.

² See '908 patent, column 18, lines 23-24, and column 19, lines 28-30.

The '908 patent discloses that the CB-PD module can be used to accelerate future improvements in the product by means of customer generated suggestions and insights.³ In this regard, Applicant notes that Figures 24 and 25, and column 32, lines 51-67 relate to the user providing feedback to the developer based on the user's use of the product. Moreover, Applicant notes that the Office Action has cited to column 48, lines 32-42 and column 77, lines 10-15 as disclosing that "the system accepts customer feedback regarding information and improvements on products before new merchandise is used."⁴

However, Applicant respectfully submits that the '908 patent fails to disclose that the opinion information (not on use of the new merchandise by the customers, but on the merchandise planning and development information) is inputted based on the displayed merchandise planning and development information in the development period of the new merchandise, and until before the new merchandise is manufactured, as recited in Claim 30. The cited section in column 48 of the '908 patent relates to ways that a user directs the design evolution of the products, but all the feedback provided by the user relates to the use of a particular product. In particular, the '908 patent discloses in column 48 that the CB-PD module could be programmed to include "what if" opportunities for simulations and using the product in certain ways, which again is information regarding how an existing product may be used in different ways, but is not based on merchandise planning and development information prior to manufacturing of new merchandise.

The feedback information disclosed by the '908 patent is not based on displayed information related to design specifications of new merchandise in the development period through the Internet, but relates to the user's evaluation of an existing product and how that product might be improved. For example, Applicant notes that Claim 1 of the '908 patent is directed to a system for use with the units of a computer product that includes interaction

³ '908 patent, column 12, lines 43-46.

⁴ See page 8 of the outstanding Office Action.

scripts that mediate two-way interaction between each of the users and a corresponding unit of the product via the user interface, each of the interaction groups causing information and questions on use of the unit of the product to be conveyed to the user from the unit of the product, and enabling information and questions about use of the unit of the product to be conveyed from the user to the product.

Further, the passage in column 77 of the '908 patent refers to systems that are easy and inexpensive to incorporate into prototype products in various stages of development to enable cheap and fast field-testing worldwide, to learn what needs to be fixed before the product is shipped. However, this passage relates to testing of a prototype product after the product has been initially manufactured and relates to use of the product by a customer.

The '051 patent is directed to a system configured to process information to identify product choices within a range of product choices for a user, based on user preferences. Thus, the '051 patent discloses a system that attempts to identify appropriate product choices for a user from a predetermined list of existing products.

However, Applicant respectfully submits that the '051 patent fails to disclose a merchandise planning information notice step of informing many and unspecified users of merchandise planning and development information relating to design specifications of new merchandise in a development period, through the Internet, and until before the new merchandise is manufactured, as recited in amended Claim 30. On the contrary, the '051 system is used by a particular user to select among various products. Further, the '051 patent fails to disclose displaying an inquiry input screen into which the customers input opinion information, prior to manufacture of the new merchandise, not on use of the new merchandise by the customers, but on the merchandise planning and development information, as recited in Claim 30.

Accordingly, no matter how the teachings of the '908 and '015 patents are combined, the combination does not teach or suggest a merchandise planning and development method in which the opinion information is inputted based on display merchandise planning and development information in the development period of the new merchandise, not on use of the new merchandise by the customers, as recited in amended Claim 30. Accordingly, Applicant respectfully submits that amended Claim 30 (and all similarly rejected dependent claims) patentably define over any proper combination of the '908 and '051 patents.

Independent Claim 55 recites limitations analogous to the limitations recited in amended Claim 30. Moreover, Claim 55 has been amended in a manner analogous to the amendment to Claim 30. Accordingly, for reasons analogous to the reasons stated above for the patentability of Claim 30, Applicant respectfully submits that the rejection of Claim 55 is rendered moot by the present amendment to that claim.

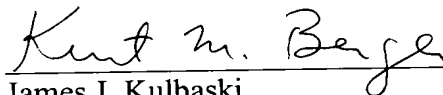
Regarding the rejection of dependent Claims 34-54 under 35 U.S.C. § 103(a), Applicant respectfully submits that the '014 patent, the '054 patent, and the Palmer and Anonymous references fail to remedy the deficiencies of the '908 and '051 patents, as discussed above. Accordingly, Applicant respectfully submits that the rejections of dependent Claims 34-54 are rendered moot by the present amendment to independent Claim 30.

Thus, it is respectfully submitted that independent Claims 30 and 55 (and all associated dependent claims) patentably define over any proper combination of the '908 patent, the '051 patent, the '014 patent, the '045 patent, and the Palmer and Anonymous references.

Consequently, in view of the present amendment and in light of the above discussion, the outstanding grounds for rejection are believed to have been overcome. The application as amended herewith is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Kurt M. Berger", is written over a horizontal line.

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